

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**ANDREW WALDROP SR.,**

**Plaintiff,**

**vs.**

**NICOLE DOE,**

**Defendant.**

**Case No. 18-cv-1770-NJR**

**MEMORANDUM AND ORDER**

**ROSENSTENGEL, District Judge:**

Plaintiff Andrew Waldrop, Sr., an inmate in the Illinois Department of Corrections who is currently incarcerated in Stateville Correctional Center, brings this action for deprivations of his constitutional rights pursuant to 42 U.S.C. § 1983 for actions that occurred at Menard Correctional Center. In the Complaint, Plaintiff alleges defendant was deliberately indifferent to his serious medical need. He asserts claims under the Eighth Amendment and seeks a declaratory judgment, monetary damages, and injunctive relief.

This case is now before the Court for preliminary review of the Complaint pursuant to 28 U.S.C. § 1915A. Under Section 1915A, the Court is required to screen prisoner complaints to filter out non-meritorious claims. *See* 28 U.S.C. § 1915A(a). Any portion of a complaint that is legally frivolous, malicious, fails to state a claim upon which relief may be granted, or asks for money damages from a defendant who by law is immune from such relief must be dismissed. 28 U.S.C. § 1915A(b). At this juncture, the factual allegations of the *pro se* complaint are to be liberally construed. *Rodriguez v. Plymouth Ambulance Serv.*, 577 F.3d 816, 821 (7th Cir. 2009).

## Discussion

Based on the allegations of the Complaint, Plaintiff is a type-1 diabetic. (Doc. 1, p. 4). On June 24, 2016, he suffered from a low blood sugar attack and fell as he tried to climb down from the top bunk, injuring his knees. *Id.* Plaintiff sought medical attention for his injuries from the fall and the attack, but Defendant Nicole “Doe” (a nurse or med tech at Menard Correctional Center whose last name is unknown at this point) denied him relief, causing his pain to go unaddressed for several days and resulting in a permanent limp. (Doc. 1, p. 5).

At this juncture, the Court finds it convenient to divide the *pro se* action into a single count:

**Count 1: Nicole “Doe” was deliberately indifferent to the injuries Plaintiff sustained due to a low blood sugar incident, in violation of the Eighth Amendment.**

The parties and the Court will use this designation in all future pleadings and orders, unless otherwise directed by a judicial officer of this Court. **Any other claim that is mentioned in the Complaint but not addressed in this Order should be considered dismissed without prejudice as inadequately pled under the *Twombly* pleading standard.**<sup>1</sup>

Plaintiff has adequately stated a deliberate indifference to serious medical needs claim. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *Chatham v. Davis*, 839 F.3d 679, 684 (7th Cir. 2016).<sup>2</sup> Therefore, the Court will order service on Defendant Nicole “Doe”, and the case will proceed.

## Pending Motions

Plaintiff filed a motion for service of process at government expense and a motion for counsel with the Complaint. The Court is obligated to serve defendants pursuant to Federal Rule

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<sup>1</sup> See *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (an action fails to state a claim upon which relief can be granted if it does not plead “enough facts to state a claim to relief that is plausible on its face”).

<sup>2</sup> There is some indication from the Complaint that this action may be time-barred, but not so much as to describe the defense as “unmistakable,” so the Court will leave the issue to the parties for further development. *Walker v. Thompson*, 288 F.3d 1005, 1009 (7th Cir. 2002); *Gleash v. Yuswak*, 308 F.3d 758, 760 (7th Cir. 2002).

of Civil Procedure 4 where, as here, a plaintiff proceeds *pro se*, so Plaintiff's motion for service of process at government expense is moot.

Plaintiff also has asked the Court to appoint him counsel. A district court "may request an attorney to represent any person unable to afford counsel." 28 U.S.C. § 1915(e)(1). There is, of course, no constitutional or statutory right to counsel for a civil litigant. *Stroe v. Immigration and Naturalization Servs.*, 256 F.3d 498, 500 (7th Cir. 2001); *Zarnes v. Rhodes*, 64 F.3d 285, 288 (7th Cir. 1995). Recruitment of counsel lies within the sound discretion of the court. *See Pruitt v. Mote*, 503 F.3d 647, 654 (7th Cir. 2007) (citing *Johnson v. Doughty*, 433 F.3d 1001, 1006 (7th Cir. 2006)).

In determining whether to recruit counsel, the Court is directed to make a two-fold inquiry: "(1) has the indigent plaintiff made a reasonable attempt to obtain counsel or been effectively precluded from doing so; and if so, (2) given the difficulty of the case, does the plaintiff appear competent to litigate it himself?" *Pruitt*, 503 F.3d at 654 (citing *Farmer v. Haas*, 990 F.2d 319, 321-22 (7th Cir. 1993)). The first prong of the analysis is a threshold question. If a plaintiff has made no attempt to obtain counsel on his own, the court should deny the request. *See Pruitt*, 503 F.3d at 655.

The Court finds that Plaintiff has failed to meet his threshold burden of making a "reasonable attempt" to secure counsel. *See Santiago v. Walls*, 599 F.3d 749, 760 (7th Cir. 2010). Plaintiff's motion left the section blank that asks about his attempts to recruit counsel. The Court therefore presumes that Plaintiff has made no attempt to recruit counsel for this case on his own. As Plaintiff has failed to make his threshold showing, the Court will not recruit counsel for him at this time. Should Plaintiff wish to request counsel at a future time, he should contact at least three

legal service providers and provide to the Court the names, addresses, and any correspondence rejecting his case in support of his motion.

**Disposition**

**IT IS HEREBY ORDERED** that the Complaint against Nicole “Doe”, a nurse or med tech at Menard survives threshold review. Plaintiff’s motion seeking service of process at government expense (Doc. 3) is **MOOT**. Plaintiff’s motion requesting appointment of counsel (Doc. 4) is **DENIED without prejudice**.

**IT IS ORDERED** that the Clerk of Court shall prepare for Defendant Nicole “Doe”: (1) Form 5 (Notice of a Lawsuit and Request to Waive Service of a Summons), and (2) Form 6 (Waiver of Service of Summons). The Clerk is **DIRECTED** to mail these forms, a copy of the Complaint, and this Memorandum and Order to Defendant’s place of employment as identified by Plaintiff. If Defendant fails to sign and return the Waiver of Service of Summons (Form 6) to the Clerk within 30 days from the date the forms were sent, the Clerk shall take appropriate steps to effect formal service on Defendant, and the Court will require Defendant to pay the full costs of formal service, to the extent authorized by the Federal Rules of Civil Procedure.

**IT IS FURTHER ORDERED** that, if Defendant cannot be found at the work address provided by Plaintiff, the employer shall furnish the Clerk with Defendant’s current work address, or, if not known, Defendant’s last-known address. This information shall be used only for sending the forms as directed above or for formally effecting service. Any documentation of the address shall be retained only by the Clerk. Address information shall not be maintained in the court file or disclosed by the Clerk.

Defendant is **ORDERED** to timely file an appropriate responsive pleading to the Complaint and shall not waive filing a reply pursuant to 42 U.S.C. § 1997e(g).

Pursuant to Local Rule 72.1(a)(2), this action is **REFERRED** to United States Magistrate Judge Donald G. Wilkerson for further pre-trial proceedings.

Further, this entire matter is **REFERRED** to United States Magistrate Judge Donald G. Wilkerson for disposition, as contemplated by Local Rule 72.2(b)(3) and 28 U.S.C. § 636(c), *should all the parties consent to such a referral.*

**IT IS FURTHER ORDERED** that if judgment is rendered against Plaintiff, and the judgment includes the payment of costs under Section 1915, Plaintiff will be required to pay the full amount of the costs, regardless of whether his application to proceed *in forma pauperis* is granted. *See* 28 U.S.C. § 1915(f)(2)(A).

Finally, Plaintiff is **ADVISED** that he is under a continuing obligation to keep the Clerk of Court and each opposing party informed of any change in his address; the Court will not independently investigate his whereabouts. This shall be done in writing and not later than **7 days** after a transfer or other change in address occurs. Failure to comply with this order will cause a delay in the transmission of court documents and may result in dismissal of this action for want of prosecution. *See* FED. R. CIV. P. 41(b).

**IT IS SO ORDERED.**

**DATED: December 5, 2018**



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**NANCY J. ROSENSTENGEL**  
**United States District Judge**

### **Notice to Plaintiff**

The Court will take the necessary steps to notify the defendant of your lawsuit and serve her with a copy of your complaint. After service has been achieved, the defendant will enter her appearance and file an Answer to your complaint. It will likely take at least **60 days** from the date of this Order to receive the defendant's Answer, but it is entirely possible that it will take **90 days** or more. After the defendant has filed an Answer, the Court will enter a Scheduling Order containing important information on deadlines, discovery, and procedures. Plaintiff is advised to wait until counsel has appeared for the defendant before filing any motions, in order to give the defendant notice and an opportunity to respond to those motions. Motions filed before defendant's counsel has filed an appearance will generally be denied as premature. **Plaintiff need not submit any evidence to the court at this time, unless otherwise directed by the Court.**